

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**LAROY E. HERVEY,**

**Defendant.**

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**CASE NO. 8:08CR82**

**TENTATIVE FINDINGS**

The Court has received the Revised Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 20). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶ 28 (dangerous weapon enhancement) and ¶¶ 33-36 (career offender enhancement). The objections will be heard at sentencing. The government bears the burden with respect to both objections, and the standard for both issues is by a preponderance of the evidence. Regarding the objection to ¶¶ 33-36, the parties are asked to consider the following opinion: *United States v. Williams*, 2008 WL 2668792 (8<sup>th</sup> Cir. July 9, 2008).

**IT IS ORDERED:**

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 20) will be heard at sentencing;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 11<sup>th</sup> day of August, 2008.

BY THE COURT:

S/ Laurie Smith Camp  
United States District Judge